

The Dynamics of Family Law Reform in Muslim Societies: A Comparative Fiqh Analysis of Gender Justice and Legal Modernization

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Abstract

This study examines the dynamics of family law reform in Muslim societies through a comparative fiqh perspective, with a particular focus on gender justice and legal modernization. The research is motivated by the growing tension between classical Islamic legal doctrines and contemporary demands for equality, especially in the domain of family law, which directly governs gender relations. It aims to analyze how Muslim countries reinterpret Islamic legal principles to accommodate evolving social realities while maintaining normative legitimacy. This research employs a qualitative legal method with a comparative and normative approach. Primary data consist of statutory regulations on family law from selected Muslim-majority countries, including Indonesia, Morocco, and Tunisia, while secondary data are derived from classical fiqh literature, contemporary scholarly works, and international human rights instruments. Data are collected through document analysis and examined using interpretative and comparative analytical techniques grounded in maqāṣid al-sharī'ah. The findings reveal that reforms in family law across Muslim societies demonstrate a shift from rigid textualism toward contextual and purposive interpretations of Islamic law. Countries adopting progressive reforms tend to integrate gender justice principles by reinterpreting doctrines such as qiwāmah, polygamy, and divorce rights, aligning them with broader objectives of justice, welfare, and human dignity. Moreover, the incorporation of international human rights norms has influenced legal restructuring, although often mediated by local religious and political considerations. In conclusion, the study affirms that the integration of gender justice within Islamic family law is both normatively justifiable and socially necessary, and therefore recommends the adoption of a maqāṣid-based interpretative framework alongside institutional legal reform to ensure a more equitable, adaptive, and sustainable family law system in Muslim societies.

Keywords: Family Law Reform; Gender Justice; Contemporary Fiqh; Maqāṣid Al-Sharī'Ah.

Abstrak

Penelitian ini mengkaji dinamika reformasi hukum keluarga di masyarakat Muslim melalui perspektif fikih komparatif dengan menitikberatkan pada isu keadilan gender dan modernisasi hukum. Latar belakang penelitian ini berangkat dari adanya ketegangan antara doktrin fikih klasik dengan tuntutan kesetaraan dalam konteks sosial kontemporer, khususnya dalam ranah hukum keluarga yang mengatur relasi gender secara langsung. Penelitian ini bertujuan untuk menganalisis bagaimana negara-negara Muslim melakukan reinterpretasi terhadap prinsip-prinsip hukum Islam guna menjawab perubahan sosial sekaligus mempertahankan legitimasi normatifnya. Metode penelitian yang digunakan adalah metode hukum kualitatif dengan pendekatan normatif dan komparatif. Data primer berupa peraturan perundang-undangan hukum keluarga dari beberapa negara Muslim, seperti Indonesia, Maroko, dan Tunisia, sedangkan data sekunder meliputi literatur fikih klasik, karya sarjana kontemporer, serta instrumen hak asasi manusia internasional. Teknik pengumpulan data dilakukan melalui studi dokumentasi, yang kemudian dianalisis menggunakan pendekatan interpretatif dan komparatif berbasis *maqāṣid al-sharī'ah*. Hasil penelitian menunjukkan bahwa reformasi hukum keluarga di berbagai negara Muslim mengarah pada pergeseran dari pendekatan tekstual menuju pendekatan kontekstual dan teleologis. Negara-negara yang mengadopsi reformasi progresif cenderung mengintegrasikan prinsip keadilan gender melalui reinterpretasi konsep-konsep seperti *qiwāmah*, poligami, dan hak perceraian, sehingga selaras dengan tujuan syariat yang menekankan keadilan, kemaslahatan, dan martabat manusia. Selain itu, pengaruh standar hak asasi manusia internasional turut mendorong transformasi hukum, meskipun tetap disesuaikan dengan konteks sosial dan keagamaan masing-masing negara. Kesimpulannya, integrasi prinsip keadilan gender dalam hukum keluarga Islam tidak hanya memiliki legitimasi normatif dalam kerangka *maqāṣid al-sharī'ah*, tetapi juga menjadi kebutuhan sosial yang mendesak, sehingga penelitian ini merekomendasikan penguatan pendekatan interpretatif berbasis *maqāṣid* serta reformasi kelembagaan hukum yang progresif guna mewujudkan sistem hukum keluarga yang adil, adaptif, dan berkelanjutan.

Kata Kunci: Reformasi Hukum Keluarga; Keadilan Gender; Fikih Kontemporer; *Maqāṣid Al-Sharī'Ah*.

INTRODUCTION

The development of family law in contemporary Muslim society demonstrates the complex dynamics between the demands of legal modernization and the commitment to normative principles in classical jurisprudence. Social transformation, globalization, and growing awareness of gender justice issues have prompted various Muslim countries to reform their family law systems. This reform is not only related to normative changes in the legal text, but also touches on methodological aspects in the interpretation of Islamic law, especially in relation to *ijtihād*, *maqāṣid al-sharī'ah*, and hermeneutic approaches to

the sources of Islamic law.¹ In this context, family law is one of the most significant arenas in showing the tension between tradition and modernity in the Islamic legal system.

Historically, family law in Islam is rooted in the construction of classical fiqh compiled by scholars from various sects. The construction was greatly influenced by the social, cultural, and political context at the time of its formation. However, in the development of modern society, the social structure that is the basis for the formation of classical fiqh has undergone significant changes, including in terms of gender relations, the role of women in public spaces, and the concept of the family itself.² Data from the United Nations Development Programme (UNDP) show that the level of women's participation in education and the labour market in Muslim countries has increased significantly in the last three decades, which has a direct impact on changes in relationships within family institutions. Therefore, many of the provisions in classical family law are no longer fully relevant to contemporary social conditions.

In this context, family law reform in various Muslim countries became an inevitable phenomenon. Countries such as Morocco, Tunisia, Indonesia, and Malaysia have made various reform efforts with diverse approaches. For example, Morocco through the Mudawwanah reforms of 2004 introduced the principle of equality in marital relations and

¹ Ahmad Ash Shiddieqy et al., "Integration of Islamic Family Law and Gender Equality: A Comparative Study of Legal Reform and Social Norms in Contemporary Muslim Societies," *Legitima: Jurnal Hukum Keluarga Islam* 7, no. 2 (June 30, 2025): 1, <https://doi.org/10.33367/legitima.v7i2.7101>; Ahmad Ash Shiddieqy and others, "Integrating Islamic Family Law and Gender Equality: A Comparative Study of Legal Reform and Social Norms in Contemporary Indonesia and Morocco," *Legitima: Jurnal Hukum Keluarga Islam* 7, no. 2 (2025); Uthman Mehdad Al-Turabi and Jasser Auda, "Toward a Maqāṣid-Based Legal Reform: Systemic Thinking for Social Transformation in the Modern Muslim World," *Indonesian Journal of Islamic Law* 8, no. 2 (2025).

² Abdul Aziz and Ali Mutakin, "Criticism of Mixed Marriage and Child Citizenship Rights: Family Law Reform in Indonesia," *SHAHIH: Journal of Islamicate Multidisciplinary* 9, no. 2 (January 9, 2025): 117–38, <https://doi.org/10.22515/shahih.v9i2.10111>; Muchlis et al., "The Supreme Court and Islamic Family Law Reform," *Jurnal Hukum Dan Peradilan* 14, no. 3 (November 30, 2025): 677–700, <https://doi.org/10.25216/jhp.14.3.2025.677-700>; Fuad Riyadi et al., "Constitutional Ijtihad and the Reform of Islamic Family Law: A Comparative Analysis of Indonesia and Egypt in Advancing SDG 16," *Profetika: Jurnal Studi Islam* 26, no. 02 (August 12, 2025): 353–70, <https://doi.org/10.23917/profetika.v26i02.11106>; Doni Azhari and Asmuni Asmuni, "Gender Equality in the Political Reform of Islamic Family Law in Contemporary Muslim Countries," *USRATY: Journal of Islamic Family Law* 3, no. 1 (June 30, 2025): 87–99, <https://doi.org/10.30983/usraty.v3i1.8721>.

tightened the practice of polygamy. Tunisia even went so far as to ban polygamy since 1956, making it one of the Muslim countries with the most progressive family law reforms. Meanwhile, Indonesia, through the Compilation of Islamic Law (KHI) and various decisions of the Constitutional Court, shows gradual efforts in accommodating the values of gender justice without explicitly abandoning the classical fiqh framework.³

This phenomenon shows that family law reform in Muslim societies is not homogeneous, but is strongly influenced by the socio-political context, state ideology, and methodological approach to Islamic law. In this case, there are two main tendencies in family law reform, namely the textualist approach that seeks to maintain the authority of classical fiqh, and the contextualist approach that encourages the reinterpretation of legal texts based on the principles of justice and benefit.⁴ This contextualist approach often uses the framework of

³ Selman Zahid Özdemir, "Islamic Family Law in Morocco: Historical Developments and Reforms," *Ilahiyat Studies* 16, no. 1 (June 30, 2025): 107–22, <https://doi.org/10.12730/is.1585555>; Riyadi et al., "Constitutional Ijtihad and the Reform of Islamic Family Law: A Comparative Analysis of Indonesia and Egypt in Advancing SDG 16"; Zikry Rahmatillah et al., "Reform and Codification of Islamic Family Law in Turkey: From The Ottoman Law of Family Rights to the Turkish Civil Code of 1926," *An-Nisa: Journal of Islamic Family Law* 2, no. 4 (December 21, 2025): 326–41, <https://doi.org/10.63142/an-nisa.v2i4.246>; Ibnu Akbar Maliki Ibnu and Digdo Aji Mukti Digdo, "Islamic Family Law Reform in Indonesia: An Analysis of KH. Ahmad Azhar Basyir's Legal Interpretation Regarding the Irrelevance of Zihar," *ADHKI: JOURNAL OF ISLAMIC FAMILY LAW* 7, no. 1 (August 6, 2025), <https://doi.org/10.37876/adhki.v7i1.143>; Nadiyah Seff et al., "Islamic Family Law and Women's Rights in Indonesia: Between Normativity, Reform, and Social Realities," *ASEAN Journal of Islamic Studies and Civilization (AJISC)* 2, no. 2 (2025); Shiddieqy and others, "Integrating Islamic Family Law and Gender Equality: A Comparative Study of Legal Reform and Social Norms in Contemporary Indonesia and Morocco"; Haroon Khalid, "Family Rights in Pakistan: Intersecting International Obligations and Plural National Legal Frameworks," *Indus Journal of Social Sciences* 3, no. 2 (May 2, 2025): 320–40, <https://doi.org/10.59075/ijss.v3i2.1219>; Farida Nurun Nazah, Restia Gustiana, and Tobibatus Saadah, "Gender Justice in Child Custody Disputes: The Maqāshid Al-Sharī'ah Approach in Contemporary Judicial Practice," *MILRev: Metro Islamic Law Review* 4, no. 2 (November 10, 2025): 1328–58, <https://doi.org/10.32332/milrev.v4i2.10790>.

⁴ Amir Fazlim Jusoh Yusoff and Mursyid Djawas, "Problems of Muslim Society in Southeast Asia: A Study of the Impact of Online Games from an Islamic Law Perspective," *Samarah* 9, no. 2 (2025), <https://doi.org/10.22373/sjhk.v9i2.26385>; Hussein Raja Al-Shuqairat, Abd-Al Razzak Mahmoud Al-Maani, and Mohanad Nayef Aldajah, "Islamic Historiography and Modernity: A Systematic Literature Review on the Evolution of Muslim Societies in the Postcolonial Era," *Journal of Islamic Thought*

maqāsid al-sharī'ah as a basis for justifying legal reform, emphasizing that the primary goal of sharia is to realize justice, welfare, and protection of the rights of individuals, including women.

The issue of gender justice has become one of the main focuses in family law reform in the Muslim world. Studies have shown that the provisions of classical family law often place women in subordinate positions, especially in terms of guardianship (wilāyah), talaq rights, inheritance division, and child custody. For example, in many traditional family law systems, men have the unilateral right to impose talaq, while women face various restrictions in filing for divorce. In addition, the practice of polygamy and inequality in inheritance distribution are also widely debated issues from a gender justice perspective.⁵ Data from the

and Civilization 15, no. 1 (April 25, 2025): 240–60, <https://doi.org/10.32350/jitc.151.14>; Shafizan Mohamed, “Media and Muslim Societies during the Time of Islamic Revivalism (1800s-1950s),” *International Journal of Islamic Thought* 23, no. 1 (June 1, 2023), <https://doi.org/10.24035/ijit.23.2023.260>; Aylin Özman, “Law, Ideology and Modernization in Turkey: Kemalist Legal Reforms in Perspective,” *Social & Legal Studies* 19, no. 1 (March 9, 2010): 67–84, <https://doi.org/10.1177/0964663909346196>; Fradhana Putra Disantara, “Konsep Pluralisme Hukum Khas Indonesia Sebagai Strategi Menghadapi Era Modernisasi Hukum,” *Al-Adalah: Jurnal Hukum Dan Politik Islam* 6, no. 1 (June 14, 2021): 1–36, <https://doi.org/10.35673/ajmpi.v6i1.1129>; Tasbih Tasbih et al., “Islamic Feminists’ Rejection of the Textual Understanding of Misogynistic Hadiths for the Advancement of Gender Justice in Makassar, Indonesia,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (February 7, 2024): 196, <https://doi.org/10.22373/sjhc.v8i1.19856>.

⁵ Farida Nurun Nazah, Restia Gustiana, and Tobibatus Saadah, “Gender Justice in Child Custody Disputes: The Maqāsid Al-Sharī'ah Approach in Contemporary Judicial Practice”; Linda Naicker, “Gender Justice, Ecological Responsibility and Sustainable Development in Africa: A Theological Perspective,” *Pharos Journal of Theology* 106, no. 106.2 (March 2025), <https://doi.org/10.46222/pharosjot.106.2010>; Nur Syamsiah and Siti Aisyah, “Gender Justice in Islamic Higher Education: Challenges and Opportunities in the Digital Age,” *International Journal of Learning, Teaching and Educational Research* 24, no. 8 (August 30, 2025): 1092–1113, <https://doi.org/10.26803/ijlter.24.8.49>; Reut Itzkovitch-Malka, “Law, Gender Justice, and the Dynamics of Democratic Backsliding,” *Laws* 14, no. 5 (October 12, 2025): 77, <https://doi.org/10.3390/laws14050077>; Fathul Mu’in et al., “Reconstructing the Concept of Mahar through the Mubādalāh Framework from a Gender Justice Perspective: Implications for Contemporary Islamic Family Law Reform,” *Journal Discrimination and Injustice*, December 27, 2025, 132–46, <https://doi.org/10.70992/qv5p9248>; Azhari and Asmuni, “Gender Equality in the Political Reform of Islamic Family Law in Contemporary Muslim Countries”; Mala Hayati et al., “Islamic Family Law in Tunisia: Reforms, Characteristics, and

World Bank show that the gender-based legal gap is still a challenge in many Muslim countries, especially when it comes to legal protection of women in family institutions.

Nevertheless, family law reform efforts have often faced resistance from conservative groups who consider changes to family law to be a departure from Islamic teachings. In this perspective, family law is considered a part of the shari'a that is permanent (*thābit*), so it cannot be changed by social or political considerations. This argument is often based on a literal understanding of the texts of the Qur'an and Hadith, without considering the historical context and normative purpose of the law.⁶ Therefore, the debate on family law reform is not only legal, but also theological and ideological.

Within the framework of contemporary jurisprudence, various approaches have emerged that seek to bridge the gap between the demands of legal modernization and commitment to sharia principles. One of the approaches that has developed is maqāṣid-based fiqh which emphasizes the importance of understanding the purposes of Islamic law in formulating laws that are relevant to the modern context. In addition, more flexible approaches to ushul fiqh, such as the concepts of istihsān, maslahah mursalah, and sadd al-dharā'i, are also used to support family law reform.⁷ This approach allows for the reinterpretation of legal texts

Challenges,” *An-Nisa: Journal of Islamic Family Law* 2, no. 3 (October 1, 2025): 219–31, <https://doi.org/10.63142/an-nisa.v2i3.244>.

⁶ Aishath Khaleela Abdul Sattar and Frakhanda Yousaf, “Negotiating Authority: Ulama and Family Law Reforms in Pakistan,” *Ittesaal – Journal of Connecting Discourses*, December 30, 2025, 67–83, <https://doi.org/10.64984/ijcd.2.2.2025.23>; Agus Firdaus Chandra et al., “The Legal Interpretation of Hadiths on Marriage in Fath Al-Mun'im: Mūsā Shāhīn Lāshīn's Insights and Role in Islamic Family Law Reform,” *AL QUDS: Jurnal Studi Alquran Dan Hadis* 9, no. 2 (August 31, 2025): 326–43, <https://doi.org/10.29240/alquds.v9i2.13894>; Mughniatul Ilma, “Islamic Legal Reform and the Principle of Moderation: A Study of Indonesian Family Law,” *AL-HUKAMA* 15, no. 1 (June 15, 2025): 68–93, <https://doi.org/10.15642/alhukama.2025.15.1.68-93>.

⁷ Riyadi et al., “Constitutional Ijtihad and the Reform of Islamic Family Law: A Comparative Analysis of Indonesia and Egypt in Advancing SDG 16”; Abdul Majid, “ISLAMIC LEGAL REFORM BASED ON MAQĀṢID SYARĪ'AH: A STUDY OF AL-GHAZĀLĪ'S THOUGHTS AND ITS RELEVANCE IN THE CONTEXT OF INDONESIAN FAMILY LAW,” *USRAH: Jurnal Hukum Keluarga Islam* 6, no. 4 (October 1, 2025): 1–11, <https://doi.org/10.46773/usrah.v6i4.2195>; Norhartijah binti Puteh and Cecep Soleh Kurniawan, “Reforming Islamic Family Law in Southeast Asia: A Comparative Study of Indonesia, Malaysia, and Brunei Darussalam,” *ASEAN Journal of Islamic Studies and Civilization (AJISC)* 2, no. 1 (2025); Özman, “Law, Ideology and Modernization in Turkey: Kemalist Legal Reforms in Perspective”; Eman I. Ahmed, “Systematic Review of Research on Educational Leadership and

without having to abandon the epistemological framework of Islamic law.

Thus, the dynamics of family law reform in Muslim societies reflect the effort to find a balance between tradition and modernity, between text and context, and between religious authority and social demands. A comparative study of various models of family law reform is important to understand how the principles of fiqh can be adapted in different contexts, as well as how the concept of gender justice can be integrated into the Islamic legal system without neglecting its normative values.

This study aims to analyze the dynamics of family law reform in Muslim society through a comparative fiqh approach, focusing on the issue of gender justice and legal modernization. By comparing different reform models in several Muslim countries, this research is expected to make a theoretical contribution to the development of contemporary jurisprudence, as well as a practical contribution to the formulation of family law policies that are more just and responsive to social change. In addition, this research also seeks to identify challenges and opportunities in the process of family law reform, as well as offer a conceptual framework that can be used to bridge the gap between sharia principles and the demands of modernity in the context of Islamic family law.

RESEARCH METHODS

This study uses a normative legal research method with a prescriptive-analytical character, which aims to examine and formulate the ideal concept of family law reform in Muslim society. This method was chosen because the research focuses on the analysis of legal norms, fiqh principles, and conceptual constructions related to gender justice and legal modernization in an Islamic perspective. The approaches used include a statute approach, a conceptual approach, and a comparative approach. The legislative approach is used to examine family law regulations in various Muslim countries, such as Indonesia, Morocco, Tunisia, and Malaysia. The conceptual approach is used to analyze key concepts in contemporary jurisprudence, such as *maqāṣid al-sharī'ah*, *ijtihād*, and gender justice, while the comparative approach is used to compare the model of family law reform between countries in order to find their legal patterns, differences, and implications.

Management in Muslim Societies,” *Educational Management Administration & Leadership* 51, no. 1 (January 20, 2023): 52–74, <https://doi.org/10.1177/1741143220973658>.

The data sources in this study consist of primary legal materials and secondary legal materials. Primary legal materials include normative texts that have direct authority, namely the Qur'an and Hadith as the main sources of Islamic law, as well as laws and regulations related to family law in the countries that are the object of study, such as the Compilation of Islamic Law (KHI) in Indonesia, the Moroccan Mudawwanah (2004), the Tunisian Code of Personal Status, and the Islamic Family Law Act in Malaysia. In addition, relevant court decisions, including those of the Constitutional Court in Indonesia and religious court rulings, are also used as primary legal material to see the implementation of norms in practice. The secondary legal materials include scientific literature in the form of books, articles from reputable international journals, reports of international institutions (such as UNDP and the World Bank), as well as works of contemporary fiqh scholars who discuss family law reform and gender justice.

The data collection technique is carried out through library research by searching, identifying, and categorizing legal materials that are relevant to the focus of the research. All data obtained were then analyzed using qualitative analysis techniques with descriptive-analytical and comparative methods. Descriptive analysis is used to systematically expose the construction of family law in classical jurisprudence and modern regulation, while comparative analysis is used to compare different models of family law reform in Muslim countries. Furthermore, an analytical approach based on *maqāṣid al-sharī'ah* is used to evaluate the extent to which the reforms reflect the principles of justice, benefit, and protection of human rights, particularly in the context of gender justice. The results of this analysis are then formulated prescriptively to offer a conceptual framework for Islamic family law reform that is adaptive, contextual, and just.

RESULTS AND DISCUSSION

Epistemology of Classical Fiqh and Reinterpretation in Contemporary Family Law

The epistemology of classical fiqh in Islamic family law is rooted in an established methodological construction in the discipline of *ushul al-fiqh*. The main foundation of the formation of the law is sourced from the Qur'an, Hadith, *ijma'*, and *qiyas* as normative devices that form a deductive framework in the determination of law. In the context of family law (*ahwal al-syakhshiyah*), this construction is not only normative-theological, but also reflects the social reality of Arab society and early Islamic regions which became the historical context for the

emergence of fiqh schools.⁸ Therefore, the understanding of classical jurisprudence epistemology cannot be separated from the historical, sociological, and political dynamics that surround it.

Methodologically, classical scholars such as Imam al-Shafi'i, Abu Hanifah, Malik bin Anas, and Ahmad bin Hanbal developed different approaches to understanding normative texts. These differences have a direct impact on the formulation of family law, such as in the case of guardianship (territory), divorce (ṭalāq), and inheritance division. For example, the Hanafi school tends to give a wider space to rationality through the use of istihsan, while the Maliki school prioritizes *maslahah mursalah* as a legal consideration.⁹ Historical data shows that these differences result in significant legal variations in various Islamic regions, which still affect the national legal system in Muslim countries, including Indonesia.

However, classical fiqh epistemology has a dominant characteristic in the form of textual and deductive approaches that in some cases become less responsive to contemporary social changes. This is especially evident in modern family law issues such as gender equality, child protection, and the dynamics of relationships within the household. For example, the practice of polygamy, which in classical jurisprudence is allowed under certain conditions, in the modern context often raises

⁸ Asmuni Asmuni, "Krisis Nalar Fiqih (Pembacaan Perspektif Epistemologi Jabirian Dan Hamadian)," *Millah* 18, no. 2 (February 16, 2019): 177–206, <https://doi.org/10.20885/millah.vol18.iss2.art1>; Zainuddin and Mutawali, "Maqasid Al-Syari'ah and Recognifiguration of Mashlahah: A Critique of Classical Ushul Al-Fiqh Epistemology," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 58, no. 2 (2024); Mahathir Muhammad Iqbal, "Merumuskan Konsep Fiqh Islam Perspektif Indonesia," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 2, no. 1 (June 30, 2017), <https://doi.org/10.22515/alakhkam.v2i1.820>; Khabibatun Nisa and M. Yunus Abu Bakar, "Ilmu Fiqih Dalam Perspektif Filsafat Ilmu," *Mutiara: Jurnal Penelitian Dan Karya Ilmiah* 3, no. 1 (January 7, 2025): 224–43, <https://doi.org/10.59059/mutiara.v3i1.2051>.

⁹ Moh Usman, "Maslahah Mursalah Sebagai Metode Istinbath Hukum Perspektif Al-Thufi Dan Al-Qaradhawi," *Jurnal Hukum Islam Dan Pranata Sosial Islam* 08, no. 1 (2020); Novita Sari, "Maslahah Mursalah As a Consideration for Completion of Islamic Law Based on the Maqasid Shari'ah Principle," *ICHES: International Conference on Humanity Education and Society* 3, no. 1 (2024); Syarif Hidayatullah, "Maslahah Mursalah Menurut Al-Ghazali," *Al-Mizan* 4, no. 1 (2018); Nasrullah et al., "Reconstructing the Indonesian Legal System through the Lens of *Maṣlaḥah Mursalah*," *Al-Manahij: Jurnal Kajian Hukum Islam* 19, no. 1 (June 23, 2025): 117–32, <https://doi.org/10.24090/mnh.v19i1.7861>.

the issue of substantive justice for women.¹⁰ Data from various international institutions show that the practice of polygamy in some countries is still correlated with inequality of economic and social rights for women, which demands a substantive justice-based reinterpretation of the law.

In response to these challenges, various contemporary approaches have emerged that seek to reconstruct the epistemology of Islamic law without ignoring its normative authority. One of the most significant approaches is *maqāṣid al-sharī'ah*. This approach emphasizes that the main purpose of the sharia is to maintain the five basic principles (*al-kulliyāt al-khams*), namely religion, soul, intellect, descent, and property.¹¹ In the context of family law, *maqāṣid* provides an evaluative framework to assess whether a legal provision is still relevant to the goal of justice and benefit.

The implementation of *maqāṣid* in contemporary family law can be seen in the legal reforms in various Muslim countries. In Indonesia, for example, Law No. 1 of 1974 concerning Marriage (which has been updated with Law No. 16 of 2019) sets the minimum age of marriage to 19 years for men and women. This policy is based on considerations of child protection and reproductive health, which is in line with the

¹⁰ Lendrawati, "Classical Fiqh Reform on Polygamy Licensing in Law No.1 of 1974," *Ijtihad* 36 (2020); M Fikri Yuda, Akbarizan Akbarizan, and Akmal Abdul Munir, "Comparison of Munakahat Fiqh Applied by Yemen and Indonesia: A Comparative Study in Maslahat Review," *QISTINA: Indonesian Multidisciplinary Journal* 4, no. 1 (June 28, 2025): 1329–41, <https://doi.org/10.57235/qistina.v4i1.6541>; Mirza Elmy Safira, "Marriage Agreements Perspectives on Contemporary Islamic Law," *Journal of Innovative and Creativity (Joecy)* 4, no. 2 (May 15, 2024): 37–44, <https://doi.org/10.31004/joecy.v4i2.158>; Muhammad Iqbal Juliansyahzen, "RECONSTRUCTION OF MUHAMMAD SHAHRUR'S CONTEMPORARY ISLAMIC LEGAL REASONING AND ITS CONTEXTUALIZATION," *Al-Mawarid Journal of Sharia and Law (JSYH)* 4, no. 1 (September 28, 2022): 57–74, <https://doi.org/10.20885/mawarid.vol4.iss1.art4>; M A A Azid, M F M Ariffin, and ..., "The Revolution of Islamic Law Postmodernism: An Analysis of Gender Issues," *RABBANICA-Journal of ...* 1, no. 1 (2020); Badruzaman, "SUING THE INTERPRETATION OF POLYGAMY VERSES; OFFERING THE IDEA OF PROF. DR. AMINA WADUD ON THE INTERPRETATION OF POLYGAMY," *Al-Adyan* 14, no. 01 (2019).

¹¹ Usman, "Maslahah Mursalah as a Method of Istinbath of Law from the Perspective of Al-Thufi and Al-Qaradhawi"; Sari, "Maslahah Mursalah As a Consideration for Completion of Islamic Law Based on the Maqasid Shari'ah Principle"; Hidayatullah, "Maslahah Mursalah According to Al-Ghazali"; Nasrullah et al., "Reconstructing the Indonesian Legal System through the Lens of Maṣlaḥah Mursalah."

principles of maqāṣid in safeguarding the soul and offspring.¹² Data from the Central Statistics Agency (BPS) in 2022 shows that the rate of child marriage in Indonesia has decreased after the revision of the law, although there are still challenges in its implementation in certain areas.

In addition to maqāṣid, the contextual ijihad approach is also an important instrument in the reinterpretation of family law. Ijihad is no longer understood solely as an individual effort by scholars to dig out the law from the text, but also as a collective process involving various disciplines, including sociology, anthropology, and gender studies. This approach allows Islamic law to be more responsive to rapid social changes, such as women's increased participation in the public sector and changes in the modern family structure.¹³

To illustrate, on the issue of women's rights in divorce, many Muslim countries have adopted more protective mechanisms, such as the obligation to mediate, post-divorce alimony, and restrictions on unilateral talaq practices. Data from the World Bank show that family law reform in countries such as Morocco through Moudawana 2004 has increased women's access to justice in divorce proceedings.¹⁴ These

¹² Syarifah Lisa Andriati, Mutiara Sari, and Windha Wulandari, "Implementation of Changes to the Marriage Age Limit According to Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage," *Binamulia Law* 11, no. 1 (July 10, 2022): 59–68, <https://doi.org/10.37893/jbh.v11i1.673>; Chaula Luthfia et al., "TIME TO GET MARRIED IN LAW NUMBER 16 OF 2019: (A Review of Islamic Law on the Age of Marriage)," *Ahwaluna / Journal of Islamic Family Law* 6, no. 1 (March 31, 2025): 1–26, <https://doi.org/10.70143/ahwalunajurnalhukumkeluargaislam.v6i1.435>; Rahmad Satria et al., "Prevention of Child Marriage According to Law No. 16 of 2019 concerning Amendments to the Marriage Law," *Journal of Community Empowerment Learning (JP2M)* 4, no. 1 (June 12, 2023): 97–107, <https://doi.org/10.33474/jp2m.v4i1.19866>; Sri Karyati, Baiq Farhana Kurnia Lestari, and Arya Sosman, "Policy on the Prevention of Child Marriage in NTB Province after the Enactment of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage," *Journal of Unizar Law Review* 2, no. 2 (2019).

¹³ Muchlis et al., "The Supreme Court and Islamic Family Law Reform"; Riyadi et al., "Constitutional Ijihad and the Reform of Islamic Family Law: A Comparative Analysis of Indonesia and Egypt in Advancing SDG 16."

¹⁴ Sattar and Yousaf, "Negotiating Authority: Ulama and Family Law Reforms in Pakistan"; Özdemir, "Islamic Family Law in Morocco: Historical Developments and Reforms"; Ilma, "Islamic Legal Reform and the Principle of Moderation: A Study of Indonesian Family Law"; Zikry Rahmatillah et al., "Reform and Codification of Islamic Family Law in Turkey: From The Ottoman Law of Family Rights to the Turkish Civil Code of 1926"; Muhammad Hamizan Ab Hamid and Nur Rohmah Hayati, "COMPARATIVE STUDY OF FIQH EDUCATION ON WAQF IN MALAYSIA

reforms are based on the reinterpretation of classical texts taking into account the modern social context and the principle of gender justice.

The hermeneutic approach of Islamic law also plays an important role in the reinterpretation of classical fiqh epistemology. Hermeneutics allows for the rereading of normative texts by taking into account historical, linguistic, and social contexts. In this framework, the text is not understood literally, but as part of a dialogue between revelation and reality. This approach opens up space for a more inclusive and adaptive reinterpretation of family law to the needs of modern society.

However, this reinterpretation effort is inseparable from criticism. Some argue that contemporary approaches have the potential to obscure the authority of the text and open up space for legal relativism. Therefore, a balance is needed between methodological flexibility and commitment to the basic principles of sharia. In this case, ushul fiqh remains an important epistemological framework to maintain the legitimacy of Islamic law.

The results of the analysis show that flexibility in ushul fiqh has actually been an inherent part of the Islamic legal tradition since its inception. Concepts such as *taghayyur al-ahkam bi taghayyur al-azman wa al-amkan* (changes in law with changes in time and place) show that classical scholars have realized the importance of adapting law to social contexts. Thus, the reinterpretation of contemporary family law is not a form of aberration, but a continuation of the existing *ijtihad* tradition.

Furthermore, empirical data show that countries that successfully carry out family law reforms based on *maqāṣid* and contextual *ijtihad* tend to have better indicators of family welfare. For example, a UNDP report shows that increased gender equality in family law correlates with an increase in the human development index. This strengthens the argument that the reinterpretation of Islamic law based on benefits can make a real contribution to the welfare of society.

Thus, this discussion emphasizes that classical fiqh epistemology has an adaptive capacity that can be actualized through contemporary approaches. The reinterpretation of family law does not mean abandoning tradition, but rather actualizing the universal values of sharia in a changing context. Methodological flexibility in ushul fiqh is a strong basis for family law reform, while adhering to the basic principles of sharia and the goal of the benefit of the *ummah*.

AND INDONESIA,” *As-Sibyan* 7, no. 2 (March 12, 2025): 151–67, https://doi.org/10.52484/as_sibyan.v7i2.724.

Comparison of Family Law Reform in Muslim Countries Between Regulation and Social Reality

Family law reform in Muslim countries is a phenomenon that reflects the dynamics between sharia normative texts, contemporary social needs, and global pressures on human rights principles and gender equality. Indonesia, Morocco, Tunisia, and Malaysia present different reform models, both in terms of progressiveness and implementation approach. This difference is not only influenced by the fiqh tradition adhered to, but also by the political configuration, state ideology, and openness to global discourse.

Indonesia, as the country with the largest Muslim population in the world, has adopted a gradual and compromising reform model. Family law reform is formally outlined in Law Number 1 of 1974 concerning Marriage which was later updated through Law Number 16 of 2019, especially related to the age limit of marriage. The increase in the minimum age limit to 19 years for both men and women is a response to the high rate of child marriage. Data from the Central Statistics Agency (BPS) shows that in 2018, about 11.21% of women married before the age of 18, which then decreased to about 9.23% in 2022 after the revision of the law. However, the implementation of this regulation still faces challenges, especially due to the marriage dispensation granted by religious courts. The Supreme Court noted that in 2020 there were more than 64,000 applications for marriage dispensation, which shows a significant gap between legal norms and social practices.¹⁵

In the context of polygamy, Indonesia applies a restrictive approach through a court permit mechanism. Normatively, polygamy is only allowed under certain conditions, such as the wife's inability to

¹⁵ Badruzaman, "SUING THE INTERPRETATION OF POLYGAMY VERSES; OFFERING THE IDEA OF PROF. DR. AMINA WADUD ON THE INTERPRETATION OF POLYGAMY"; Andriati, Sari, and Wulandari, "Implementation of Changes to the Marriage Age Limit According to Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage"; Luthfia et al., "TIME TO GET MARRIED IN LAW NUMBER 16 OF 2019: (A Review of Islamic Law on the Age of Marriage)"; Satria et al., "Prevention of Child Marriage According to Law No. 16 of 2019 concerning Amendments to the Marriage Law"; Karyati, Lestari, and Sosman, "Policy on the Prevention of Child Marriage in NTB Province after the Enactment of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage"; Al-Turabi and Auda, "Toward a Maqāṣid-Based Legal Reform: Systemic Thinking for Social Transformation in the Modern Muslim World"; Puteh and Kurniawan, "Reforming Islamic Family Law in Southeast Asia: A Comparative Study of Indonesia, Malaysia, and Brunei Darussalam."

carry out obligations or health reasons. However, in practice, polygamy still occurs unrecorded (*nikah siri*), resulting in weak legal protection for women and children. This suggests that formal regulation has not been fully able to control social practices that are deeply rooted in certain cultures and religious interpretations.¹⁶

In contrast to Indonesia, Morocco adopted a more progressive approach to reform through the codification of family law in the 2004 *Mudawwana*. These reforms were driven by a combination of internal pressure from the women's movement and the state's commitment to international standards. The *Mudawwanah* introduced the concept of equality between husband and wife in the family, raised the minimum age of marriage to 18, and tightened the requirements for polygamy by requiring the consent of the first wife and strict court permission. Data from Morocco's Ministry of Justice shows that the number of polygamy applications declined significantly after the reforms, from about 1,000 cases per year to less than 300 cases in the past decade.¹⁷

However, the effectiveness of reforms in Morocco is also inseparable from the challenges of implementation. Empirical studies

¹⁶ Shiddieqy and others, "Integrating Islamic Family Law and Gender Equality: A Comparative Study of Legal Reform and Social Norms in Contemporary Indonesia and Morocco"; Ibnu and Digdo, "Islamic Family Law Reform in Indonesia: An Analysis of KH. Ahmad Azhar Basyir's Legal Interpretation Regarding the Irrelevance of *Zihar*"; Zikry Rahmatillah et al., "Reform and Codification of Islamic Family Law in Turkey: From The Ottoman Law of Family Rights to the Turkish Civil Code of 1926"; Muslih Muslih and Almi Jera Almi, "Compilation of Islamic Law within the Framework of State Typology: A Critical Analysis of the Reform of Islamic Family Law in Indonesia," *ADHKI: JOURNAL OF ISLAMIC FAMILY LAW* 6, no. 1 (August 6, 2025), <https://doi.org/10.37876/adhki.v6i1.212>.

¹⁷ Triana Triana Apriyanita, "Religious Arguments in the Debate on Family Law Reform in Morocco (1957–1958 to 2004 *Mudawwanah*)," *Socio Historica: Journal of Islamic Social History* 3, no. 1 (October 14, 2025): 17–30, <https://doi.org/10.15408/sh.v3i1.38393>; Ali Trigiyanatno et al., "The Shift of Family Law in Morocco from the *Mudawwanah* of 1957-1958 to the *Mudawwanah* of 2004," *Al-Qanun: Journal of Islamic Law Thought and Reform* 25, no. 2 (December 20, 2022): 233–47, <https://doi.org/10.15642/alqanun.2022.25.2.233-247>; Ahmad Ash Shiddieqy et al., "Integration of Islamic Family Law and Gender Equality: A Comparative Study of Legal Reform and Social Norms in Contemporary Muslim Societies"; Shiddieqy and others, "Integrating Islamic Family Law and Gender Equality: A Comparative Study of Legal Reform and Social Norms in Contemporary Indonesia and Morocco"; Miyase YAVUZ ALTINTAŞ, "A Mediator Between Sharia and State Law: Aḥmad Al-Khamliṣhi's Legal Thinking and Contribution to Reforms," *Cumhuriyet İlahiyat Dergisi* 27, no. 3 (December 15, 2023): 809–25, <https://doi.org/10.18505/cuid.1340204>.

show that judges still have broad discretion in granting polygamy permits or marriage age dispensations. In addition, social factors such as poverty and low levels of women's education are still the main causes of underage marriage. This indicates that legal reform, although normatively progressive, still requires comprehensive social policy support to achieve optimal effectiveness.¹⁸

Tunisia is often considered a pioneer of family law reform in the Muslim world, especially through the Code of Personal Status (CPS) which has been in place since 1956. The CPS expressly prohibits polygamy, provides relatively equal divorce rights for men and women, and places the state as the primary authority in marriage and divorce arrangements. These reforms were based on the strong ideology of state secularism and a commitment to the modernization of the law. Data from the United Nations Development Programme (UNDP) shows that Tunisia has one of the highest gender equality indices in the North African region, with a relatively high rate of women's participation in education and labour compared to other Muslim countries.¹⁹

Nonetheless, the social reality in Tunisia also shows resistance to some aspects of reform, especially in rural areas that still retain traditional values. Informal practices that are not legally recorded still occur, albeit on a smaller scale than in other countries. This confirms that changes in the law are not always followed linearly by changes in people's culture.²⁰

¹⁸ Apriyanita, "Argumen Keagamaan Dalam Perdebatan Reformasi Hukum Keluarga Di Maroko (Mudawwanah Tahun 1957-1958 Ke Mudawwanah Tahun 2004)"; Ali Trigiyatno et al., "Pergeseran Hukum Keluarga Di Maroko Dari Mudawwanah Tahun 1957-1958 Ke Mudawwanah Tahun 2004"; Ahmad Ash Shiddieqy et al., "Integration of Islamic Family Law and Gender Equality: A Comparative Study of Legal Reform and Social Norms in Contemporary Muslim Societies"; Shiddieqy and others, "Integrating Islamic Family Law and Gender Equality: A Comparative Study of Legal Reform and Social Norms in Contemporary Indonesia and Morocco"; YAVUZ ALTINTAŞ, "A Mediator Between Sharia and State Law: Ahmad Al-Khamlīshī's Legal Thinking and Contribution to Reforms."

¹⁹ Hayati et al., "Islamic Family Law in Tunisia: Reforms, Characteristics, and Challenges"; Al-Turabi and Auda, "Toward a Maqāsid-Based Legal Reform: Systemic Thinking for Social Transformation in the Modern Muslim World"; Azhari and Asmuni, "Gender Equality in the Political Reform of Islamic Family Law in Contemporary Muslim Countries."

²⁰ Al-Turabi and Auda, "Toward a Maqāsid-Based Legal Reform: Systemic Thinking for Social Transformation in the Modern Muslim World"; Azhari and Asmuni, "Gender Equality in the Political Reform of Islamic Family Law in

Malaysia, on the other hand, adopted a pluralistic model of reform, in which Islamic family law was governed decentrally by each state. Reforms were carried out through Islamic Family Law Enactments which underwent periodic revisions, such as in 1984 and 2005. Malaysia introduced a number of reforms, including more structured divorce procedures, strengthening of alimony rights for women, and stricter regulation of polygamy. Data from the Department of Statistics Malaysia shows that the divorce rate increased from 43,000 cases in 2010 to more than 56,000 cases in 2020, reflecting women's increasing access to legal mechanisms to end disharmonious marriages.²¹

However, the decentralized system in Malaysia also creates disparities in the implementation of laws between states. In addition, criticism from civil society groups shows that some of the legal amendments tend to strengthen the position of men, especially on the issue of polygamy and the division of common property. This shows that

Contemporary Muslim Countries”; Hayati et al., “Islamic Family Law in Tunisia: Reforms, Characteristics, and Challenges.”

²¹ Norazlina Abdul Aziz et al., “DUTY OF PATERNAL FAMILY MEMBERS IN THE MAINTENANCE OF CHILDREN ACCORDING TO SECTION 73(2) OF ISLAMIC FAMILY LAW (SELANGOR) ENACTMENT 2003,” *IJUM Law Journal* 29, no. (S1) (May 12, 2021): 111–34, [https://doi.org/10.31436/iiumlj.v29i\(S1\).638](https://doi.org/10.31436/iiumlj.v29i(S1).638); Adi Syahputra Sirait et al., “Assessing Criminal Penalties in Marriage Law: A Comparative Study of Policy Frameworks within Indonesian and Malaysian Legislation,” *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 2 (August 22, 2024): 255–70, <https://doi.org/10.24090/mnh.v18i2.11208>; Ahmad Sharifuddin Mustapha et al., “Al-Fatani’s Perspectives on Islamic Family Law: Insights from Hidayah Al-Muta’alim Wa’Umdah Al-Muta’alim,” *Journal of Islamic Thought and Civilization* 14, no. 1 (June 14, 2024): 247–65, <https://doi.org/10.32350/jitc.141.15>; Siti Farah Shahwir et al., “Proposed Solutions to Marital Crises During the Covid-19 Era According to Islamic Methods and the Islamic Family Law Enactment (State of Johor) 2003: A Study in the State of Johor,” *International Journal of Research and Innovation in Social Science* IX, no. IX (2025): 3100–3109, <https://doi.org/10.47772/IJRISS.2025.909000263>; Norazlina Abdul Aziz et al., “DUTY OF PATERNAL FAMILY MEMBERS IN THE MAINTENANCE OF CHILDREN ACCORDING TO SECTION 73(2) OF ISLAMIC FAMILY LAW (SELANGOR) ENACTMENT 2003,” *IJUM Law Journal* 29, no. S1 (2021), <https://doi.org/10.31436/iiumlj.v29iS1.638>; “Islamic Family Law Enactment 1987 (No. 3 of 1987), 20 May 1987.,” *Annual Review of Population Law* 15 (1988); Jantarda Mauli Hutagalung and Tantri Gloriawati, “Konsep Politik Legislasi Hukum Keluarga Di Indonesia,” *Jurnal Kajian Ilmiah* 23, no. 1 (January 23, 2023): 1–12, <https://doi.org/10.31599/jki.v23i1.932>.

there is a tug-of-war between the progressive reform agenda and conservative interests in the legislative process.²²

Comparatively, it can be concluded that the variation in the model of family law reform in Muslim countries is influenced by three main factors. First, the country's political system and ideology play a key role in determining the direction of reform. Tunisia with its secular approach is able to carry out radical reforms, while Indonesia and Malaysia tend to take a compromising approach that accommodates religious and cultural values. Second, the power of civil society, especially the women's movement, is very influential in pushing for more progressive reforms, as seen in Morocco. Third, the influence of globalization and international standards, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), have encouraged Muslim countries to align their regulations with human rights principles.

Nevertheless, the gap between regulation and social reality remains a major challenge in all the countries studied. In the issue of polygamy, for example, although regulations have been tightened, the practice still occurs informally in Indonesia and Malaysia. In the issue of divorce, increasing legal access for women is not always accompanied by adequate economic protection after divorce. Meanwhile, in the issue of child custody, although the principle of the best interests of children has been recognized normatively, the practice is still often influenced by gender bias and other social considerations.

Thus, family law reform in Muslim countries can be measured not only by normative changes in laws and regulations, but also by the extent to which these regulations are able to be internalized and implemented in the social life of the community. The comparative approach shows that the success of reform depends heavily on the synergy between legal change, social transformation, and consistent political commitment. Therefore, future reform efforts need to integrate a multidimensional approach that focuses not only on formal legal aspects, but also on social empowerment, education, and increasing people's legal awareness in order to realize substantive justice in Islamic family law.

²² "Islamic Family Law Enactment 1987 (No. 3 of 1987), 20 May 1987."; Sirait et al., "Assessing Criminal Penalties in Marriage Law: A Comparative Study of Policy Frameworks within Indonesian and Malaysian Legislation"; Mustapha et al., "Al-Fatani's Perspectives on Islamic Family Law: Insights from Hidayah Al-Muta'allim Wa'Umdah Al-Muta'alim."

Integration of Gender Justice Principles in Family Law Reform Contemporary Fiqh Perspective

Historically, the construction of classical fiqh was arranged in a patriarchal social context that influenced the perspective of the relationship between men and women. Provisions such as the concept of *qiwamah* (male leadership in the family), the 2:1 division of inheritance, and the restriction of women's rights in divorce are often understood textually without considering their socio-historical context. Criticism of these aspects has arisen from various circles of contemporary Muslim scholars who consider that these interpretations do not fully reflect the spirit of justice which is the basic principle of sharia. Empirical data from various Muslim countries show that women still experience inequities in access to family rights, including limitations in filing for divorce, discrimination in the division of common property, and lack of legal protection against domestic violence.²³

In responding to these criticisms, the contemporary reinterpretation or *ijtihad* approach is the main instrument. Thinkers such as Fazlur Rahman, Amina Wadud, and Abdullahi An-Na'im emphasized the importance of reading religious texts contextually with the universal moral goals of Islam in mind. They argue that many of the provisions of classical fiqh are products of the *ijtihad* of scholars who are influenced by the social conditions of their time, so they are open to revision according to the needs of modern society. For example, the concept of *qiwamah* is no longer understood as male superiority, but as a functional responsibility that can change along with changes in the social role of women who now contribute to the family economy.²⁴

²³ T Hidayati, "The Concept of Qiwamah in the Families of Women Salt Workers in the Madura Community," ... of *Annual Conference for Muslim Scholars*, 2019; Khozinatul Asrori, "TRANSFORMATION OF QIWAMAH IN AN ECONOMIC CONTEXT (WHEN WIVES BECOME THE BACKBONE OF THE FAMILY)," *Familia: Journal of Family Law* 5, no. 2 (December 29, 2024): 153–78, <https://doi.org/10.24239/familia.v5i2.232>; Wardah Nuroniyah, "The Concept of Qiwamah and the Phenomenon of Women as the Head of the Family," *Equalita* 4, no. 1 (2022); Nur Faizah, "THE CONCEPT OF QIWAMAH IN ISLAMIC JURISPRUDENCE FROM A GENDER JUSTICE PERSPECTIVE," *Al-Ahwal: Journal of Islamic Family Law* 11, no. 1 (June 30, 2018): 13–22, <https://doi.org/10.14421/ahwal.2018.11102>; Saujan Iqbal et al., "Gender Beyond Binary: Inheritance Rights of Third Gender in Islamic Law – Sri Lankan Legal Recognition and Reform," *Indonesian Journal of Islamic Law* 8, no. 2 (2025), <https://doi.org/10.35719/5fnmdq24>.

²⁴ Hidayati, "The Concept of Qiwamah in the Families of Women Salt Workers in the Madura Community"; Asrori, "The Transformation of Qiwamah in an Economic

The maqāṣid al-sharī'ah approach plays an important role in the legitimacy of gender justice-based family law reform. Maqāṣid al-sharī'ah, which includes the protection of religion (*ḥifẓ al-dīn*), soul (*ḥifẓ al-nafs*), reason (*ḥifẓ al-'aql*), heredity (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*), provides a flexible normative framework for assessing whether a provision of law is still relevant or contrary to the purpose of the shari'a. In this context, gender justice can be positioned as part of efforts to maintain human dignity (*karāmah al-insān*) and justice ('*adl*) as fundamental values of Islam.²⁵ Therefore, the reinterpretation of discriminatory family law can be justified as long as it aims to achieve broader benefits.

The implementation of this approach can be seen in family law reforms in various Muslim countries. In Morocco, for example, the Mudawwanah reforms of 2004 introduced significant changes such as raising the minimum age of marriage for women, recognition of equal responsibilities in the family, and expanding women's rights in divorce. In Tunisia, family law even prohibits polygamy and provides equal legal standing between husband and wife in various aspects. Meanwhile, Indonesia, through the Compilation of Islamic Law (KHI) and various Supreme Court rulings, has begun to show progressive tendencies, for example in the recognition of women's economic rights after divorce and protection for victims of domestic violence.²⁶

Data from international institutions such as UN Women and the World Bank show that gender-sensitive family law reforms contribute to improving women's well-being, including in access to education, health, and economic participation. In countries that have undergone significant

Context (When the Wife Becomes the Backbone of the Family)"; Nuroniyah, "The Concept of Qiwamah and the Phenomenon of Women as the Head of the Family"; Faizah, "The Concept of Qiwamah in Islamic Jurisprudence From a Gender Justice Perspective"; Norazlina Abdul Aziz et al., "Duty Of Paternal Family Members In The Maintenance Of Children According To Section 73(2) Of Islamic Family Law (Selangor) Enactment 2003."

²⁵ Faizah, "The Concept of Qiwamah in Islamic Jurisprudence From a Gender Justice Perspective"; Badruzaman, "Suing the Interpretation of Polygamous Verse; Offering Prof. Dr. Amina Wadud's ideas on the interpretation of polygamy."

²⁶ Burhanuddin et al., "Reconstruction Of Gender Justice In The Customary Law Community Of Kampung Kuta Ciamis: A Review Of Patriarchal Culture," *Petita: Journal of Legal Studies and Sharia* 10, no. 1 (January 31, 2025), <https://doi.org/10.22373/petita.v10i1.373>; Faizah, "The Concept of Qiwamah in Islamic Jurisprudence From a Gender Justice Perspective"; Badruzaman, "Suing the Interpretation of Polygamous Verse; Offering Prof. Dr. Amina Wadud's ideas on the interpretation of polygamy."

reforms, there is a positive correlation between gender equality in family law and a reduction in poverty rates and an increase in the human development index. This indicates that gender justice is not only a normative issue, but also has broad practical implications for social development.

However, the integration of the principle of gender justice in Islamic family law is not separated from challenges. One of the main challenges is the resistance from conservative groups who see reform as a form of westernization or a deviation from Islamic teachings. In addition, there is a methodological problem in determining the boundary between texts that are fixed (*qaṭʿī*) and those that can be reinterpreted (*zannī*). In many cases, these debates are not only academic, but also political, as they relate to the legitimacy of religious and state authorities in determining the direction of legal reform.

In a global context, the discourse of gender justice in Islamic family law is also closely related to international human rights standards, as stated in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Many Muslim countries have ratified this convention, albeit with a number of reservations relating to family law. This shows that there is an effort to strike a balance between commitment to international norms and the need to maintain the identity of Islamic law. In practice, some countries have adopted a harmonized approach by interpreting sharia principles in line with universal human rights values, including equality and non-discrimination.²⁷

Based on this analysis, it can be concluded that the integration of the principles of gender justice in Islamic family law reform requires a multidimensional approach that includes the reinterpretation of the text, the use of the framework of *maqāṣid al-sharīʿah*, as well as constructive dialogue with international legal standards. The resulting conceptual framework must be able to bridge the gap between the normative authority of sharia and the demands of modern social justice. Thus, family law reform is not only reactive to global pressures, but is also rooted in Islam's internal values that emphasize justice, welfare, and respect for human dignity.

²⁷ Palasenda, Nabil Fikri. 2025. "The Problem of Marriage Dispensation Between Theory and Practice". *Mawaddah: Jurnal Hukum Keluarga Islam* 3 (2): 181-200. <https://doi.org/10.52496/mjhki.v3i2.14>; Moh Rosil Fathony et al., "Resistance to Gender Equality: Criticism of Physical Violence from the PKDRT Law Perspective," *Indonesian Journal of Islamic Law* 7, no. 1 (2024), <https://doi.org/10.35719/1xjdkk59>.

Furthermore, the sustainability of these reforms is highly dependent on institutional support, including the role of the state, judicial institutions, and religious authorities in internalizing the principles of gender justice into legal policies and practices. Progressive Islamic legal education and capacity building for judges and legal practitioners are also key factors in ensuring that reforms do not stop at the normative level, but are actually implemented effectively in people's lives. Thus, the integration of gender justice in Islamic family law can be the foundation for the creation of a legal system that is more inclusive, fair, and responsive to the needs of the times.

CONCLUSION

The results of the study show that the dynamics of family law reform in Muslim society cannot be separated from the complex interaction between the classical fiqh tradition and the demands for legal modernization. Epistemologically, Islamic family law has inherent flexibility through methodological instruments in ushul fiqh, such as *ijtihad*, *maqāṣid al-sharī'ah*, and the concept of *maslahah*. The findings of this study confirm that the reinterpretation of normative texts is not a form of deviation from the sharia, but part of an effort to contextualize the law to remain relevant to social changes. Thus, family law reform can be understood as an adaptive process that remains rooted in theological legitimacy, as well as responsive to the development of contemporary society.

Comparatively, the study found that the model of family law reform in different Muslim countries showed significant variation, both in the degree of progressivity and the approach used. Countries such as Morocco and Tunisia tend to adopt more substantive reforms in integrating the principles of gender equality, while Indonesia and Malaysia are taking a gradual path while maintaining the normative framework of classical fiqh. These differences are influenced by socio-political factors, state ideology, and institutional capacity to implement the law. In addition, there is a fairly pronounced gap between legal regulation and practice on the ground, which suggests that the success of reform is determined not only by normative change, but also by the effectiveness of implementation and social acceptance.

Furthermore, this study confirms that the integration of gender justice principles in family law reform is inevitable in the context of modern Muslim society. The approach of contemporary jurisprudence based on *maqāṣid al-sharī'ah* provides a strong conceptual foundation for harmonizing sharia values with the principles of equality and human

rights. However, challenges in the form of ideological resistance and limited interpretation remain the main obstacles in the reform process. Therefore, this study recommends the need to strengthen contextual methodological approaches in the development of Islamic family law, increase the role of judicial and legislative institutions in ensuring effective implementation, and mainstream gender justice perspectives throughout the process of establishing and implementing family law in Muslim countries.

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